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Chairman: Mr. Tulbure ..... (Moldova)

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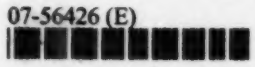

The meeting was called to order at 3.10 p.m.

Agenda item 86: The rule of law at the national and international levels (*continued*) (A/62/121 and Add.1 and A/62/261)

1. **Ms. Blum** (Colombia) said that, although the agenda item had been formally introduced at the sixty-first session, the concept of the rule of law had been central to the work of the Organization from the very beginning. The Charter of the United Nations was a pillar of the international rule of law and established principles that all Member States were obliged to respect, including the principles of coexistence, peaceful settlement of international disputes, good faith fulfilment of obligations under international law, respect for human rights and fundamental freedoms, self-determination, legal equality and independence. Among other basic texts, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States emphasized the paramount importance of the Charter in promoting the rule of law, and the Universal Declaration of Human Rights identified the rule of law as the means of protecting those rights.

2. While there was no specific definition of the rule of law at the national level, it could be inferred from the body of international instruments, declarations and resolutions and from the legal literature that the concept encompassed the principle of legality, the protection of human rights and fundamental freedoms and the full exercise of democratic institutions. The United Nations had always devoted great efforts in that regard to strengthening national institutions, in particular domestic administration of justice and electoral systems.

3. There was no consensus on a definition of the rule of law at the international level either, but it was clear from the principles set forth in the Charter and other instruments that it existed and deserved as much attention as the rule of law at the national level. It was perhaps more appropriate to refer to the international rule of law, as a concept distinct from the traditional concept of the rule of law as limited to the nation-State. The basis of the international rule of law was an international legal system that recognized the legal equality of States and set limits on the exercise of power through checks and balances in order to avoid excesses and arbitrariness. The consolidation of the international rule of law, as well as its observance, was a responsibility of all international actors.

4. International organizations played a key role in the establishment, promotion and development of the international rule of law and hence must abide by it. The principle of legality should govern all their actions and decisions. Adherence to their own founding rules and other rules of international law could not be set aside on the pretext of re-interpreting them or pursuing purportedly higher aims. The United Nations, as the global institution par excellence devoted to maintaining peace and security and promoting friendly relations among nations, should set an example of compliance with the international rule of law. The Organization itself was based on a system of checks and balances among its organs, and if any one of them exceeded its mandate the balance would be altered and the rule of law undermined. Moreover, the de facto extension of the powers of some of the organs on the grounds that they faced new challenges would violate the principle of multilateralism on which the United Nations system was based. All organs of the United Nations, without exception, were subject to the principle of legality and to *jus cogens* norms. Her delegation had serious reservations about the theory of implicit powers, which could weaken the principle of legality and result in ultra vires actions taken by international organizations, one of the more common and sometimes subtle ways of undermining the rule of law.

5. The rule of law required strengthening at both the national and international levels in order to achieve the higher ends of peace and development. However, the United Nations currently tended to emphasize the national component. While it was true that much work needed to be done at that level, more attention should be paid to the international rule of law to maintain symmetry between the two dimensions.

6. **Ms. Bolaño Prada** (Cuba) said, although the topic was relatively new on the Committee's agenda, it deserved to be given priority consideration to promote progress towards an international order in which recognized norms of international law were respected. The absence of the rule of law or of clear rules defining its scope could leave room for or even be used to justify the commission of wrongful acts, such as aggression, genocide, drug trafficking and other transnational crimes.

7. The rule of law at the national level should encompass the following elements: a legal system in which all acts harmful to the proper functioning of society were defined by law, full compliance with legal norms, equitable and non-arbitrary application of laws, a structure ensuring full compliance with the law, democracy, justice and social order. Her delegation believed those to be generally applicable principles, but any definition should take into account the specific characteristics of each country and of the different political, economic and social systems, in keeping with the principles of the independence and sovereignty of States.

8. Cuba attached particular importance to the rule of law at the international level. There should be broad cooperation among States in strict conformity with the purposes and principles of the Charter of the United Nations and the principles of international law as an indispensable basis for promoting economic development and social progress as well as peace and security in international relations. States must, first and foremost, comply with the provisions of the international agreements to which they were parties. It was important to avoid double standards in applying international law, re-interpretations by some countries of the provisions of international conventions and the unilateral exercise of extraterritorial criminal and civil jurisdiction by national courts without a basis in international treaties or other obligations deriving from international law.

9. Within the United Nations itself there should be respect for the rule of law. There should be a balance among the principal organs of the United Nations based on their respective mandates under the Charter. It was a matter of concern that the Security Council was becoming involved in legislative matters which were within the exclusive competence of the General Assembly. Her delegation was confident that consideration of the question would result in a reaffirmation of the central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations and its role in the process of standard-setting and the codification of international law, as affirmed in the 2005 World Summit Outcome. The General Assembly was fully authorized under Articles 10 to 14 and 35 of the Charter to consider questions relating to the maintenance of international peace and security. To achieve just and lasting peace through the world, all States, without exception, whether large or small, developed or developing, must comply with the rules of international law.

10. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that respect for the rule of law at the national level and recognition of the principles governing the rule of law at the international level created a synergy vital to democracy and good governance and to the maintenance of international peace and security. Promotion of the rule of law at the international level went back to the notion of "peace through law" put forward by the League of Nations, a concept that had also inspired the drafters of the collective security system of the United Nations. Sadly, the system as it currently operated did not live up to the hopes of its originators and the principles of the Charter. The current debate about the reform of the Organization and the need to democratize the Security Council to make it more effective and transparent and provide equitable representation should be seen as an effort to strengthen the rule of law at the international level.

11. To maintain that synergy between the rule of law at the national and international levels, it would be desirable to disseminate knowledge of international law among practitioners of the law, such as judges and attorneys, many of whom were poorly informed or simply unaware of the rules of international law. While commending the organization of seminars and workshops at United Nations Headquarters on the process of treaty ratification, his delegation thought that the impact would be even greater if such seminars were organized in the territories of Member States so that government jurists could participate. Moreover, since universities served as vectors for disseminating knowledge of international law, it would be useful to encourage close contact between universities and those responsible for the nation's international relations.

12. His country sought to contribute to the rule of law by becoming a party to the main multilateral legal instruments; it was, for instance, one of the 67 States Members of the United Nations (out of 192) that had had the courage to recognize the compulsory jurisdiction of the International Court of Justice pursuant to article 36, paragraph 2, of its Statute. The post-conflict situation in his country, where sexual exploitation of women and children remained a concern, to cite just one example, was an argument in itself for promoting the rule of law. Breaking the cycle

of violence, putting an end to impunity and laying the foundation for a democratic society — in other words, re-establishing the rule of law — constituted a major challenge, one that required in particular the satisfactory administration of justice.

13. The challenge was one that no State in a post-conflict situation could face alone, and that was the reason for his country's recourse to the International Criminal Court. The Court was about to begin its first trial, the case of *The Prosecutor v. Thomas Lubanga Dyilo* and had had a first appearance in the case of *The Prosecutor v. Germain Katanga*. The fact that Congolese nationals were the first alleged criminals to be referred to the new Court reflected the need for justice felt by the Congolese people. Although his delegation was aware that primacy of jurisdiction by the national courts was the rule, the current criminal justice system in his country was inadequate to meet the post-conflict challenges of dealing with such crimes as rape as a weapon of war, organized crime and money-laundering, arms trafficking and illegal exploitation of natural resources. Moreover, despite serious efforts to improve the penitentiary system, nearly everywhere prison conditions were deplorable, even life-threatening. Given the situation, the Government's determined efforts to create a just, reliable, honest and effective system of justice in accordance with the principles of the Charter of the United Nations and of international law and to carry out its national plan of action for the promotion and protection of human rights merited international technical and financial assistance.

14. His delegation therefore welcomed the establishment of the Rule of Law Coordination and Resource Group within the Secretariat. It believed that the new Group, in addition to the functions already entrusted to it, should have available a cooperation mechanism for providing assistance in investigating and in uncovering, gathering and preserving evidence to bring to justice the perpetrators of the most serious crimes in countries in a post-conflict situation.

15. **Mr. Ayua** (Nigeria) said that the rule of law was the bedrock of peaceful relations between individuals and among nations. Its cardinal principles — justice, legality, equality, separation of powers and the independence of the judiciary — were a sine qua non for peaceful coexistence among States. The 2005 World Summit Outcome, in which the international community had reiterated its commitment to an international world order based on the rule of law, contained a call for the establishment of a rule of law assistance unit within the Secretariat. He therefore welcomed the establishment of the Rule of Law Coordination and Resource Group, to be chaired by the Deputy Secretary-General. It was to be hoped that the Group, which should be provided with all necessary support in the discharge of its duties, would conform to the role envisaged in the World Summit Outcome. According to the Secretary-General's report (A/62/261, para. 9), 12 out of 52 United Nations bodies, including the Office of the Special Adviser on Africa, were not involved in any activities relating to the promotion of the rule of law; yet Africa's experience had shown that there could be no development without peace and security or without law and order. The Office should, along with other relevant units, be active in promoting the rule of law on the continent.

16. The rule of law should be seen as a dynamic, evolving concept that ensured the expansion of substantive freedoms and rights to vast numbers of people, since, underpinned by the necessary political will and good governance, it was the only viable mechanism to address the problems of property, tyranny and underdevelopment. The adoption of General Assembly resolution 61/39 had been an important step in that regard, since it showed the importance that the international community attached to the subject. Practical measures were needed, however, and his delegation looked forward to a more substantive report by the Secretary-General at the sixty-third session on action that had been taken. What was required was a new international legal order that adopted preferential trade policies in favour of developmentally distressed countries or countries emerging from conflicts, new laws against corruption, and new international charters that would aid the development of impoverished States. Lastly, his delegation urged all States that had not yet done so to consider accepting the compulsory jurisdiction of the International Court of Justice, which constituted a peaceful means for the settlement of international disputes.

17. **Mr. Kanu** (Sierra Leone) said that his delegation attached great importance to international law, the rule of law and justice. Specifically, the restoration of the rule of law in Sierra Leone, after 11 years of a profitless conflict, was essential if the root causes of the conflict were to be resolved and a just and

equitable society established. His Government's commitment to the rule of law was illustrated by its request for the establishment of the Special Court for Sierra Leone in June 2000. The Court was fully operational and its jurisprudence had been cited by other ad hoc tribunals.

18. During the sixtieth session, his delegation had called on the International Law Commission to formulate a set of rule of law principles in international law and it was disappointing that the proposal, which was no mere intellectual exercise for his delegation, had been ignored: the lasting scars of the war in Sierra Leone served as a reminder of the critical importance of the rule of law, the breakdown of which had led to the blot on the country's history. Sierra Leone was fortunate in having a political leadership that was committed to the rule of law: President Koroma, who had recently taken up the torch from President Kabbah, had stressed the importance of adherence to law and order, human rights and an independent judiciary. Indeed, he had committed himself to strengthening the institutions responsible for the dispensation of justice.

19. The rule of law was crucial to development, in that it ensured that resources were distributed justly and corruption minimized, so that humanitarian development assistance would be effective. His delegation therefore welcomed the support of the Peacebuilding Commission.

20. At the international level, the Security Council had, of course, primary responsibility for the maintenance of international peace and security. Strengthening the rule of law, however, was not the exclusive domain of the Council; the General Assembly and its committees also had an important role to play. It was, however, regrettable that the development of the principles of international law, especially in the area of transitional justice, had not been accompanied in equal measure by practical assistance for States or international organizations to help them meet their responsibilities. In that connection, he urged universal acceptance of the Rome Statute of the International Criminal Court, which his Government pledged to incorporate into the country's domestic legal system very shortly. He urged States to ratify international instruments and fulfil their treaty obligations by incorporating such instruments into their national legislation. That was the most basic way to enhance the rule of law at the international level.

21. The conflicts in Sierra Leone, the Democratic Republic of the Congo and many other countries demonstrated the weakness of the international community's capacity to respond to situations of impunity. He called on all States to attend a meeting, jointly hosted by his country and Canada, to discuss the Justice Rapid Response mechanism which aimed to address that weakness.

22. **Mr. Shim** (Malaysia) said that current world events clearly demonstrated the need to reawaken awareness and understanding of the rule of law at the international level. At the national level, Malaysia's criminal justice system was anchored in the Federal Constitution, the Criminal Procedure Code and the Evidence Act. The rule of law was thus the guiding principle of the country's criminal justice system. As an additional measure, the Government proposed to establish a committee to monitor the implementation of international humanitarian law in Malaysia and recommend the legislative action required for the country to accede to the relevant international humanitarian law instruments. At the international level, Malaysia participated in efforts to strengthen the international justice system, raise levels of compliance monitoring and provide more coherent responses to perceived breaches of international law, sometimes in the form of Security Council and General Assembly resolutions. It also worked for greater accountability for criminal acts, by whomever committed.

23. Consultations at the sixty-first session, in pursuance of the recommendation of General Assembly resolution 61/39 that the Committee should choose one or two sub-topics to facilitate a focused discussion for the subsequent session, had seen a divergence of views on the topics to be discussed. It was to be hoped that that scenario would not be repeated; but, should agreement be reached on the list of topics, there remained the question of the practical use of such a discussion. The Committee's workload was heavy enough as it was. As for specific topics for discussion, his delegation noted that a number of delegations wished to discuss the Rule of Law Assistance Unit. Since, however, there had been general agreement on the need to establish such a body, which would enhance coherence and coordination across the United Nations and with other actors, discussions concerning its formation should take place in plenary meetings and not in the Sixth Committee, given the moves to revitalize the General Assembly as the chief

deliberative, policymaking and representative body of the United Nations. His delegation therefore proposed that the establishment of the Unit should be taken up under agenda item 48. Once established, the Unit should be requested to provide periodic briefings and an annual report on its activities, and Member States would have the opportunity to discuss every aspect of its work in the plenary meeting.

24. **Mr. Koh** (Singapore) said that the rule of law was a crucial concept, in that it provided an equitable and predictable framework within which States could conduct relations with one another. Without such a framework, every decision would be capricious and every outcome uncertain. There was no simple or universally agreed definition of the term; but, at its most basic level, the law set out legitimate expectations of what was acceptable conduct and what was not. Action to enforce the law took place in accordance with known and established procedures. The rule of law meant that no party, whatever its status or interests, could act in an arbitrary manner.

25. In itself, however, the rule of law did not guarantee that only good laws would be enacted or bad laws repealed. Nor did it specify the appropriate balance between various interests. Much depended on the social, economic, political and cultural context of the society concerned.

26. For Singapore — which, as one of the most densely populated countries in the world, was multiracial, multilingual and multireligious — the rule of law had been a cornerstone of its stability. Whereas in homogeneous societies much was understood without the need for codification, that was not the case for heterogeneous societies like Singapore, where there was potential for strife and misunderstanding between different ethnic groups. In such circumstances, the fact that the rules were transparent to everyone and applicable to everyone meant that friction arising from different ethnic, cultural and religious perspectives could be reduced. The same applied at the international level. The effect of globalization was that the action of one country had an impact on others. The rule of law therefore set a certain benchmark, which, side by side with a recognition of and respect for the world's diversity, would enable the nations of the world to coexist and cooperate.

The meeting rose at 4.05 p.m.